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The Alcoholic Beverage Control Board in Alaska

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Summary

Alaska state law provides that Alaska communities may make legal or illegal the local sale of liquor. Further, they may restrict legal liquor sales to community-run liquor stores and may prosecute other sales of liquor or the possession or transportation of alcoholic beverages with the intent to sell them illegally. This study of the Alcoholic Beverage Control (ABC) Board, conducted in connection with a larger research project dealing with varying legal approaches to the control of alcohol use in rural Alaska, was designed to determine the extent to which statewide legalistic control mechanisms for beverage alcohol helped or hindered local option control efforts.

Additional information

This study of the Alcoholic Beverage Control (ABC) Board was conducted in connection with a larger research project dealing with "Alcohol Control in Village Alaska" sponsored by the National Institute on Alcohol Abuse and Alcoholism (NIAAA), Grant #AA03183-01.

THE ALCOHOLIC BEVERAGE
CONTROL BOARD
IN ALASKA



JUSTICE CENTER

University of Alaska, Anchorage
Anchorage, Alaska

THE ALCOHOLIC BEVERAGE
CONTROL BOARD
IN ALASKA

A Report to the
ALASKA LEGISLATURE

by

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JC 8020

December 1979


PREFACE

This report has been prepared by the Justice Center of the University of Alaska, Anchorage, for the Alaska State Legislature as a by-product to a larger ongoing study on the relationship between alcohol abuse and regulatory laws, practices and procedures. The larger study was commissioned by the National Institute on Alcohol Abuse and Alcoholism under grant number AA03183-01. No state matching funds were required or used. The action recommendations begin on page 43.

Regulation cannot provide a final solution to a problem which is woven into the fabric of a society. But management of the problem in its larger context is hindered by a background of confused regulations and obscure standards and procedures. These same deficits in the law create smaller but nevertheless real irritations and inefficiencies, baffling to the citizen, which can be met by legislative action in clarification of purpose and assignment of responsibility. If we cannot "solve" the problem of alcohol abuse, at least those governmental activities which control the distribution and sale of alcoholic beverages should not be a source of additional irritation and cynicism among the public and enforcement authorities alike.

The Center is indebted to Peter S. Ring, now at the University of California, Irvine, who, while he served on the

faculty of the Center, conducted most of the research and writing of this report. Expression of views and recommendations in this report are those of Dr. Ring and do not necessarily reflect the views of the University or any officer of it.



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THE ALCOHOLIC BEVERAGE CONTROL BOARD
IN ALASKA

I. BACKGROUND AND OBJECTIVES OF THE STUDY

This study of the Alcoholic Beverage Control (ABC) Board was conducted in connection with a larger research project dealing with "Alcohol Control in Village Alaska," sponsored by the National Institute on Alcohol Abuse and Alcoholism (NIAAA), which was directed by the Criminal Justice Center (Center), University of Alaska, Anchorage. Dr. Stephen Conn, Professor of Justice with the Center, served as the project's principal investigator. The project was designed to determine the impact, if any, of varying legal approaches to the control of alcohol use in rural Alaskan settings, focusing on two communities, Bethel and Barrow, and their satellite villages. The effects of those communities' efforts to regulate beverage alcohol consumption within their political boundaries by alternating between "wet" and "dry" status were also major areas of project inquiry.

State law provides that Alaskan communities may be wet or¹ dry. In short, communities may make legal or illegal the local² sale of liquor. Further, they may restrict legal liquor sales to community run liquor stores and may prosecute other sales of liquor or the possession or transportation of alcoholic beverages³ with the intent to sell them illegally.

1/ AS 04.10.430.

2/ AS 04.15.110.

3/ AS 04.15.070.

State law does not permit communities to make possession of beverage alcohol for private consumption illegal. Nor does state law permit dry communities to prohibit their residents from ordering liquor for personal use.

However, a significant number of villages, through ordinance or custom, attempt with varying degrees of success to prohibit the use of liquor in their village. Although such a community position is extralegal, or even illegal, it is bolstered by village councils which act in lieu of courts in some Eskimo villages, church groups, and community opinion translated into social pressure. Further, it has some wavering though indirect support in statements by legal officials (e.g., state policy) who support initial intervention into community problems by village councils without reflection as to the legality or illegality of the council as an institution or the legality or illegality of some village rules.

In brief, and as used in this paper, local control may be described as one of three "types": (1) dry by local option; (2) wet by local option; and, (3) dry by village edict and procedure. Dry or wet by local option refers to the legality or illegality of sales in that place, but not to possession or sales for private consumption made to individuals in that place from sources outside of the community.

4/ Conn, Stephen, "Alcohol Control in Village Alaska," grant no. NIAA 1 H84 AA03183-01, awarded to the Justice Center for project period October 1, 1977 through May 31, 1979.

Table 1 presents a history of recent wet/dry periods in the two communities which were the focus of the project.

TABLE 1

<u>Community</u>	<u>Wet</u>	<u>Dry</u>
Barrow	1973-1975 1977	1970-1972 1976 1978-1979
Bethel	1970-1973	1974-1979

This study of the ABC Board paralleled those time frames and was designed to determine the extent to which statewide legalistic control mechanisms for beverage alcohol helped or hindered local option control efforts. Our conclusions are based primarily on analysis of ABC Board activities, interviews with Board members and staff, interviews with others associated with the liquor "industry" in Alaska, analysis of existing and proposed statutes

and administrative regulations and analysis of legislative reviews of the Board and the laws under which it operates.

II. THE EXISTING SYSTEM OF ALCOHOL BEVERAGE CONTROL

A. Historical Development: A Brief Overview

In 1933 the territorial legislature, acting under authority granted to it by the Congress, created the Board of Liquor Control. The problems the Board was to deal with were not new to Alaska. From early territorial days, shortly after the purchase of Alaska from Russia in 1867, major enforcement problems surfaced with respect to liquor traffic and consumption. Early on, as a result of the Organic Law of 1884, all importation and sale was prohibited throughout the territory, a consequence of the declaration of Alaska as Indian country by the attorney general.⁶ Needless to say, in a land so vast such legislative efforts failed to have their intended effect: to dry up the consumption of hoochinoo and its western substitutes among the Indians of Alaska.

In 1899 Congress enacted a criminal code for the territory⁷ which included among its miscellaneous provisions in chapter 44, sections 460-478 which dealt with the regulation, licensing and sale of liquor in Alaska. The 1899 federal licensing law did not provide specific authority for local units of government to add

^{5/} See, Hinckley, Ted C., The Americanization of Alaska; 1867-1897, Palo Alto: Pacific Books Publishers, 1972, especially pp. 43-45, 70, 82-83, 93-95 and 161-162.

^{6/} Bancroft, Hubert Howe, History of Alaska 1730-1885, San Francisco: A.L. Bankcroft Co., 1886.

^{7/} 30 Stat. 1253, approved March 3, 1899.

to the established license fees or to enact ordinances to regulate liquor traffic. That federal jurisdiction was not to be shared with local government is reflected in the provision of an amendment to the 1899 law (Feb. 6, 1909, 35 Stat. L., 601) which provided that licenses would be issued only in towns and villages in which there was a United States Commissioner or Deputy Marshal.

With the passage of the Organic Act in 1912, congressional acts relating to liquor remained in full force and effect. Further, the Act severely limited the authority of the territorial legislature to alter, amend, modify or repeal those laws in force in Alaska relating to taxes on the liquor business and trade. Express authority was granted to enact other and additional taxes.

All the while, momentum was gaining across the country for total prohibition. In 1915 the territorial legislature provided for a referendum on the wet/dry issue. In record numbers Alaskans went to the polls.⁸ They voted dry by a near two to one margin: 9,055 dry; 4,815 wet. The law which had authorized the referendum provided that in the event of a favorable vote (dry), no liquor would be sold within the territory after January 1, 1918.

Congressional action negated this provision. In 1917, Congress enacted legislation⁹ which prohibited the manufacture or sale of intoxicating beverages in Alaska. Known as the

8/ "Prohibition of Liquors in the Territory of Alaska," Hearings before the Committee on the Territories, House of Representatives, 64th Congress, on H.R. 19188, January 10, 1917, p. 10, G.P.O. Washington, D.C., 1917.

9/ 39 Stat. 903-909.

"Alaska Bone-Dry Law," the legislation was deemed to have preempted regulation by Attorney General Grigsby, and thus, a 1917 territorial legislative enactment (Senate Bill 96) which sought to regulate "temperance" beverages -- those with one percent or more alcohol -- was declared null and void.

However, the "Alaska Bone-Dry Law" granted authority to the Alaska territorial legislature "[t]o enact further provisions for enforcement of the prohibition act."¹⁰ The 1917 Act did not repeal sections 462-478 of the criminal code relating to the licensing and sale of intoxicating beverages, but its provisions made "nugatory" the licensing act of 1899.

Thereafter, there was no action by Congress regulating liquor traffic until 1934 when the Bone-Dry Law was repealed and the legislature was authorized to regulate sale of liquor in Alaska. Shortly before the repeal of the Bone-Dry Law and presumably in contemplation of repeal of the Eighteenth Amendment, the Alaska legislature in 1933 enacted a Beer and Wine Licensing Act.¹¹

The 1933 Act created a Board of Liquor Control. Composed of the Governor, the attorney general, the treasurer, the auditor and the territorial highway engineer, the Act provided that they would have "full power, authority and control over the manufacture, barter, sale and possession of intoxicating liquors in the Territory of Alaska. . . ." However, the Act also provided that "the legislature of Alaska may enact laws that will provide for

¹⁰/ 39 Stat. 903-909, approved Feb. 14, 1917.

¹¹/ Ch. 71, SLA, 1933.

and supersede the powers, duties, and functions hereby delegated to the Board of Liquor Control."¹²

Between 1933 and 1957, either by regulation of the Board of Liquor Control, or by action of the territorial legislature, a reasonably comprehensive scheme of beverage alcohol regulation emerged. In 1935, by regulation (and by legislation in 1937) incorporated municipalities were given authority to govern the sale of liquor within the municipality so long as the local scheme was consistent with state regulations. Similar provisions were made for local input on the issuance of a license. And, in 1935, the Board by regulation adopted a license classification scheme provided for in the Wine and Beer Licensing Act of 1933.¹³ This scheme, with minor modification, was enacted into law in 1937¹⁴ and remained essentially intact until 1957.

Location and population restrictions were part of the early regulatory provisions¹⁵ as were provisions on local option (first enacted in 1935, amended in 1937, 1941, 1951 and 1953) and sales restrictions.

During this period, the issuance of licenses, their renewal and their enforcement had been delegated by the territorial legislature to U. S. District Court clerks who were to act in compliance "with the order of the Court or judge thereof duly made and

12/ Sec. 2, ch. 109, SLA, 1933.

13/ Ch. 71, SLA, 1933.

14/ Ch. 78, SLA, 1937.

15/ Sec. 5(3), ch. 78, SLA, 1937.

and entered." [And, in 1953, the legislature abolished the Board of Liquor Control altogether.] In Bordenelli v. U. S.,¹⁶ the Court of Appeals ruled that the territorial legislature had no authority to delegate licensing functions to the District Court and seemed to imply in its opinion that the legislature had no authority to repeal the 1933 legislation which established the Liquor Control Board because the Congress had specifically ratified that legislation.¹⁷ The Attorney General of Alaska, J. Gerald Williams, reached a similar conclusion and on April 27, 1956, by memorandum, so informed the members of the Liquor Control Board.

Thereafter, in 1957, the legislature enacted a series of provisions based on earlier legislative efforts but within the constraints imposed by the Bordenelli decision and Attorney General Williams.

B. Current Statutory Scheme

Alaska falls within that class of states which have chosen a license system of alcoholic beverage regulation. (The other system -- the control model -- results in a state monopoly on alcohol wholesale and retail sales.) Under the license system the state avoids the normal problems associated with running a business while still retaining the right to collect certain revenues from those engaged in the business. In so doing, it is presumed to lose some amount of control over the regulation of alcohol consumption among the general populace.

¹⁶/ 16 Alaska 185, 233 F.2d 120 (9th Cir., 1956).

¹⁷/ 48 USC section 292-293, 48 Stat. 583.

Alaska's statutory scheme can be readily broken down into three basic categories: (a) administrative structure, (b) licensing, and (c) regulation of sales and distribution. The analysis of the major elements of the statutory scheme which follows will parallel that trichotomy.

1. Administrative Structure

The ABC Board, by legislative mandate, has been established within the Department of Revenue.¹⁸ By statute it is composed of five members, two of whom must be actively engaged in a facet of the alcoholic beverage industry other than a wholesale enterprise. No member of the Board may hold any other state or federal office, elective or appointive, nor may the other three members be engaged in the same business, occupation or profession.¹⁹

Members of the Board are appointed by the Governor, subject to legislative confirmation, for three year overlapping terms. In addition, the Governor also appoints the Board's executive director, again subject to legislative confirmation, although as a consequence of the decision in Bradner v. Hammond, 533 P.2d 1 (Alaska 1976) confirmation has apparently not been offered nor required. The executive director serves as the executive officer of the Board -- but not as chairperson; and, while not a member of the Board, may vote to break a tie.²⁰

¹⁸/ AS 04.05.010(a).

¹⁹/ AS 04.05.010(a).

²⁰/ AS 04.05.010(b).

The Board is "vested with the duties, powers, and responsibilities involved in the control of alcoholic beverages, including the promulgation of rules and regulations and the hearing of appeals from the action of officers and employees charged with enforcing the alcoholic beverage control law, rules and regulations."²¹ AS 04.05.020 provides that such rules and regulations shall govern "the manufacture, barter, sale and possession of intoxicating liquors in the state and shall prescribe application fees." The provisions of AS 04.05.040 broadly define the scope of the Board's regulatory powers to include, among others, the regulation of employment, conduct and duties of Board employees to the issuance, renewal, reissuance, revocation and suspension of licenses and permits.

Both AS 04.05.040(5) and AS 04.05.050 authorize the Board to delegate its duties -- except those involving rule and regulation making -- to the director. In addition, AS 04.05.010(b) empowers the director to issue all licenses provided for under the title.

Provisions of chapter 5 also require that the Board establish a system for the holding of local option elections²² and make violations of the Board's rules and regulations punishable as misdemeanors.

²¹/ AS 04.05.010(a)

²²/ AS 04.05.060

2. Licensing

Article 1, chapter 10 of title 4 of the Alaska Statutes states that "no person" may engage in the sale, transfer, or barter of alcoholic beverages in the state without an appropriate license. Currently, sixteen (16) distinct types of licenses are provided for and defined by statute.²³ They include, among others: beverage dispensary,²⁴ roadhouses,²⁵ clubs,²⁶ retail,²⁷ whole-sale,²⁸ community,²⁹ and pub.³⁰

The provisions of AS 04.10.150-180 define who may qualify for a liquor license,³¹ limits the involvement of wholesalers, brewers, distillers, etc., or their owners, officers or representatives in beverage dispensary or retail liquor store operations,³² and require non-resident wholesalers and distillers, among others, to obtain licenses and designate a principle place of business within the state and therein maintain an agent and locate its records. The article also prohibits undisclosed and unauthorized

²³/ AS 04.10.020 and AS 04.10.040-146.

²⁴/ Bars; AS 04.10.020(a), 040.

²⁵/ AS 04.10.020(c) and 060.

²⁶/ AS 04.10.020(d) and 070.

²⁷/ AS 04.10.020(9) and 100.

²⁸/ AS 04.10.020(h)(1)(2) and 110.

²⁹/ AS 04.10.020(u) and 139.

³⁰/ AS 04.10.020(n) and 146.

³¹/ AS 04.10.130.

³²/ AS 04.10.160.

financial interests in licenses and makes the licensee solely responsible for the lawful conduct of the business except as otherwise provided.³³

An applicant for a new liquor license is required by AS 04.10.190 to file with the director an application as well as the appropriate license fee. Public notice of the application must be given by the Board and a new applicant may be required by the Board to make paid notice.³⁴ As a general rule, new applications will not be approved where issuance would result in two licenses of the same type serving fewer than 1,500 people.³⁵ Further, title 4 requires compliance with city zoning regulations in cases involving beverage dispensary and retail liquor stores³⁶ although the Board is interpreting this provision as applying to all classes of license. Local governing bodies are also authorized to protest the issuance, transfer or renewal of a license.³⁷ In remote areas of the state, public approval is required prior to the issuance of a new license.³⁸ Similarly, residents of areas outside an incorporated municipality can also protest the issuance of a license, and if it appears that a majority of the adult residents voted against the issuance of the license in a special

33/ AS 04.10.180.

34/ AS 04.10.200.

35/ AS 04.10.210.

36/ AS 04.10.230.

37/ AS 04.10.270.

38/ AS 04.10.310.

election the license shall not be issued.³⁹ No new license for the sale of liquor may be issued in areas outside incorporated cities unless accompanied by a petition containing signatures of a majority of the bona fide adult residents within one mile of the place where the liquor is to be sold.⁴⁰

The statutory scheme also provides for the regulation of existing licenses. They expire on December 31st,⁴¹ may only be transferred upon written approval of the Board⁴² and are renewable automatically if the appropriate fees are paid and there have been no convictions of the licensee under AS 04.15.100 nor any other lawful revocation of the license.⁴³

One intriguing provision of title 4, and one which has caused the Board some problems, permits the issuance of a licensee without regard to population limitations "when it appears that the issuance or transfer of the license will encourage the construction or improvement of a hotel, motel, resort or similar business related to the tourist trade having a minimum accommodation of 10 rooms and a dining facility. The dining facility requirement may be waived if the majority of rooms have kitchen facilities."⁴⁴

Article 5 of chapter 10 provides the legal mechanism for local option elections, the effects of which are a major research

³⁹/ AS 04.10.300.

⁴⁰/ AS 04.10.440.

⁴¹/ AS 04.10.320.

⁴²/ AS 04.10.330.

⁴³/ AS 04.10.350.

⁴⁴/ AS 04.10.260.

focus of this project. AS 04.10.430(a) authorizes a local option election when 35 percent of the total number of voters in the last general municipal election petition the city council to do so. If the vote is to go "dry," the Board must be so notified and for a period of one year thereafter no further licenses shall be issued for the city nor shall a new beverage dispensary or retail license be issued within five miles of the city. A new license or permit for the sale of beverage alcohol may not be issued by the Board within an incorporated city in which, on June 30, 1976, there was no licensed premise unless the city council has first conducted a local option election.⁴⁵

The same election procedures can be employed to establish a community liquor license. If the local community votes for that option, the Board is precluded from issuing any additional type of license other than a "hotel" license. The outcome of the election does not affect licenses issued prior to September 10, 1972.⁴⁶

3. Regulation of Sales and Distribution

The provisions of chapter 15 ostensibly provide the means by which the excesses and evils associated with alcohol consumption are to be controlled. AS 04.15.010 requires closure between the hours of 5:00 a.m. and 8:00 a.m. unless otherwise provided

^{45/} AS 04.10.430(d).

^{46/} AS 04.10.430(c).

for by municipal ordinance.⁴⁷ Sale and/or delivery to persons under the age of 19 is prohibited⁴⁸ and such persons may not enter or remain on licensed premises unless the premises are recognized as a restaurant and the minor is accompanied by a parent, guardian or spouse who has attained the age of 19.⁴⁹ Sales are prohibited within 200 feet of churches or schools.⁵⁰ Credit sales are also prohibited.⁵¹

In addition to these and other provisions of chapter 15, AS 04.15.070 authorizes municipalities to regulate the barter, sale or possession of alcohol within their boundaries by ordinance so long as they are not inconsistent with the provisions of title 4. Violations of the provisions of title 4 are considered to be misdemeanors and, upon conviction, persons are subject to imprisonment of up to one year or by a fine not to exceed \$100. Furthermore, the Board is empowered to order suspensions of licenses or to revoke a license after three violations.⁵² Sales

47/ This is clearly an important provision. The community of Juneau recently moved closing hours back to 2:00 a.m. and former District Attorney Larry Weeks reported that it had, from his perspective, a significant positive impact on levels of social disorder in that community.

48/ AS 04.15.020(a).

49/ AS 04.15.020(d).

50/ AS 04.15.020(e).

51/ AS 04.15.085.

52/ AS 04.15.100.

in violation of local option are subject to imprisonment of up to a year and/or a fine not to exceed \$5,000.⁵³

C. Current Regulatory Scheme

As authorized by statute, the Board has enacted a series of regulations which are contained in title 15, chapter 20 of the Alaska Administrative Code. They have not been added to or amended since 1963. While some of the regulations merely provide greater clarification of the statute from which they flow (e.g., 15 ACC 20.070 -- standard closing hours), others establish a permit system which authorizes the sale of liquor over a short time span and/or in a specific location (e.g., 15 AAC 20.230 -- special events permit). Authority for the issuance of these permits is derived from AS 04.05.030 and 040.

By far the most important of the regulations, however, is 15 AAC 20.010 which sets forth the grounds for suspension and/or revocation of licenses. They include:

SUSPENSION AND REVOCATION OF LICENSES.

The following are the grounds which constitute a basis for the possible suspension or the revocation of licenses:

(1) when the continuance of a license would be contrary to the best interest of the public; but proceedings under this section upon this ground are not a limitation on the Alcoholic Beverage Control Board to proceed under provisions of AS 04.05.030;

(2) a violation of any Alcoholic Beverage Control Board rule or regulation by a licensee, his agent or employee;

(3) the misrepresentation of a material fact by an applicant in obtaining any license;

⁵³/ AS 04.15.110.

(4) the plea, verdict, or judgment of guilty to any public offense involving moral turpitude or violation of any law concerning the manufacture, barter, sale and possession of intoxicating liquors;

(5) where the portion of the premises of the licensee upon which the activities permitted by the license are conducted are a resort for illegal possessors or users of narcotics, prostitutes, pimps, panderers or sexual perverts; in addition to any other legally competent evidence, the character of the premises may be proved by the general reputation of the premises in the community as a resort for illegal possessors or users of narcotics, prostitutes, pimps, panderers or sexual perverts;

(6) failure to correct objectionable conditions within a prescribed time or reasonable time after receipt of notice to make such correction issued by the Alcoholic Beverage Control Board or agent thereof;

(7) disciplinary action by military or naval authorities against any licensed premises;

(8) any failure to comply with the laws, rules and regulations pertaining to public health in Alaska;

(9) conviction of a charge of gambling within the limits of any licensed premises (eff. 10/31/59; am 6/6/63, Reg. 10).

D. Organizational Scheme

The composition of the Board has been previously described.⁵⁴ As noted, the Board is administratively situated within the Department of Revenue.

In its activities the Board is supported by a staff of 12 whose functions can be divided into three basic areas generally paralleling the statutory trichotomy set out above: administration, licensing and enforcement. Headquartered in Anchorage,

⁵⁴/ Supra, p. 9.

the staff is led by the Board's executive director whose responsibilities and duties have been partially noted previously in this report.⁵⁵ In addition to those duties prescribed by statute, the director prepares the Board's annual budget, sets the agenda for and provides input to the Board at regular and special meetings and directs all other staff functions.

The staff of the licensing division is currently made up of three full-time employees. It issues and receives license application forms, collects fees, issues all licenses and permits approved by the Board and deals with the general public on all matters related to licensing.

Enforcement activities of the Board are carried out by six investigators, three of whom are located in Anchorage. Two of the remaining staff operate out of Fairbanks and one is located in Juneau. They are supported by a clerical person. These investigators are charged by statute and by regulation with the enforcement of the provisions of title 4 of the Alaska Statutes and title 15 of the Administrative Code. Their activities include licensed premises inspections, investigations in support of civil and criminal proceedings and assistance to the licensing staff.

III. THE ABC LAWS: THE ACTUAL AND POTENTIAL USES

In this section of the report we will focus on views of the ABC Board held by various individuals or organizations. In

55/ Supra, p. 9.

developing these views we have used two approaches: (1) an analysis of very recent studies of the ABC Board, and (2) interviews with a number of individuals connected with the Board, including current and former Board and staff members.

A. Legislative Views

In late 1978 the Division of Legislative Audit, a creature of the legislature reporting to the Legislative Budget and Audit Committee, completed "A Performance Review of the Alcoholic Beverage Control Board"⁵⁶ in accordance with the provisions of AS 24.20.271(1) and AS 44.66.050 -- Alaska's "Sunset Laws." AS 44.66.010(1) decreed that the Board would terminate on June 30, 1979, although a twelve-month period was provided within which it would wrap up its affairs. The report was prepared to assist the legislature in determining what course of action to follow with respect to the Board's future.

The auditor's major conclusions were that the Board "should continue to regulate and license those persons engaged in the liquor industry. . . . However, . . . [e]nforcement responsibilities of the Board should be transferred to a special investigative unit with the Department of Public Safety."⁵⁷ The auditors further recommended transfer of licensing responsibilities to the

⁵⁶/ Division of Legislative Audit, Juneau, AK, November 3, 1978 (hereinafter referred to as the Auditor's Report).

⁵⁷/ Id., at p. 7. (Emphasis added)

Department of Commerce, Division of Occupational Licensing⁵⁸ and elimination of two administrative staff positions resulting in a savings to the state of approximately \$54,000.

Other recommendations included:

The Alcohol Beverage Control Board should adopt a regulation delegating authority to the director of the Division of Occupational Licensing for the routine issuance, transfer and renewal of unprotested licenses.

No two members of the Alcoholic Beverage Control Board should be engaged in the same business, occupation or profession.

Renewals of licenses should be made in a timely manner.

The requirement for a \$2,500 cash or surety bond for a beverage dispensary license should be eliminated from AS 04.10.040.

The Office of the Governor should keep appointments of members of the Alcoholic Beverage Control Board⁵⁹ current and stagger them as required by AS 30.05.060.

The Department of Revenue, responding through its Commissioner, Sterling Gallagher, disagreed with the auditor's major recommendations. And the current chairman of the Board concluded that what was really needed was a complete and sensible rewrite of title 4 and that if the only action taken by the legislature was adoption of the auditor's recommendations, "the problem of enforcement of ABC laws will be exacerbated, because there will be a feeling that the problem is solved."⁶⁰

58/ Id., at p. 8.

59/ Id., at pp. 17-20.

60/ Id., at p. 44c.

While the report is not overly detailed and lacks reliable data in support of its major conclusions, its biggest fault is its failure to address the question of what role, if any, the Board should play in dealing with the significant social problems associated with the sale and consumption of beverage alcohol in Alaska.⁶¹

A more definitive statement of legislative views on the role of the Board might be inferred from legislation introduced in the First Session of the Eleventh Legislature. The most comprehensive and thoroughly researched analysis of title 4 to date was produced by the Code Revision Commission, another creature of the legislature. The Commission solicited views from across the state and from all quarters and those views were maintained in a well organized file which was kindly provided to the Center by the Commission.

As noted in their statement of transmittal, dated April 18, 1979, the Commission had "been working towards a technical redraft of existing law." They attempted to "clarify and simplify" that which was already in title 4.

In an undated supplement to the Commission Transmittal Statement, the Commission provided an in-depth comparison between existing law and their proposed changes. They recommended transfer of the Board to the Department of Commerce and would require that

61/ Although, arguably, this function is outside the scope of a "Sunset" review.

one of the five members be from the public health and alcoholism treatment field. Further, they proposed an appellate role for the Board, giving the director the authority to issue or reissue licenses.

Few significant changes were proposed with respect to restrictions on licenses and licensees. The \$2,500 surety bond requirement was eliminated in keeping with the auditor's report.

Population limitations on licensing were continued as was the tourist facility license exception to those quotas. However, the facility would have to have a ten room minimum guest accommodation in order to qualify for the exemption. Notice requirements of existing law remained substantially unchanged, although they were clarified and any party to the initial hearing was given appeal rights, not just municipalities as is the case under current law.

In the licensing area, the most significant change recommended involved creating a distinction between the "license" and a "certificate to operate." The former was seen as a property right while the latter was viewed as a privilege. Thus, a license could be transferred even though the person holding the license had had his certificate to operate suspended or revoked. Of course, the new licensee would still have to qualify for a certificate to operate.

Few changes, if any, were proposed with respect to license classifications, fees, terms, and application procedures. One notable exception was the inclusion of proposed licensing criteria explicitly set forth in statute. Because this is one of the truly

"soft" areas in existing law, those criteria are set forth in full:

Sec. 04.11.210. LICENSING CRITERIA. In addition to considerations presented at hearings or otherwise, the following factors, as appropriate, may be considered by the director in acting on an application for license issuance or transfer:

(1) adequacy of licensed premises in the area of the proposed premises, with particular consideration of

(A) the clientele, seating, business volume and menu of existing outlets;

(B) size, design and decor of the proposed premises, and

(C) changes in population and economic conditions of the area;

(2) customer parking;

(3) suitability of inventory, equipment, and fixtures of proposed premises;

(4) effect of granting the license on traffic and traffic controls, with particular consideration of hazards in the area, such as dangerous crossings, school crossings, or children riding bicycles in the area;

(5) proximity of the proposed premises to schools, churches and other public institutions;

(6) effect of granting the license on public health and local law enforcement, with particular consideration of whether location of the licensed premises in proximity to other licensed premises would tend to cause or aggravate public health or law enforcement problems;

(7) effect of granting the license on law enforcement or public health in areas bordering or neighboring the area of the proposed premises and in which the sale of alcoholic beverages has been prohibited or restricted by local option election;

(8) effect of granting the license on property values in the area;

(9) objections to granting the license, with particular consideration of the number of objectors and their proximity of residence to the premises;

- (10) accuracy and completeness of information furnished by the applicant;
- (11) criminal convictions of the applicant for violations of law, or prior discipline of the applicant for violations of alcoholic beverage control laws or regulations;
- (12) financial capability and resources of the applicant;
- (13) other considerations required in this title or specified by regulation of the board;
- (14) other considerations which the director determines to be in the best interests of the public.

It is interesting to note that this section was not a part of SB 239 as introduced.

The proposal also contained changes paralleling those recommended by the auditor's report which were designed to take the Board out of the creditor satisfaction business.

In the area of local option, the Commission proposed some of its more significant changes, designed primarily to clarify questions which had arisen over the years out of ambiguities in existing law. It spelled out the questions associated with wet/dry elections, eliminated the once a year limit on such elections, continues the misdemeanor penalties on sales in dry areas but makes it clear that telephone or mail orders originating from dry areas to licensed premises are not illegal transactions.

With respect to methods of operating premises the Commission proposed changes designed to make enforcement of laws prohibiting serving intoxicated persons somewhat easier. Similar efforts were undertaken with respect to service to minors issues.

Finally, the Commission identified a number of policy considerations for the legislature without recommending changes in those policies. Included among these issues were the following:

- (1) the composition of the Board, especially the notion of requiring two industry representatives;
- (2) the Board's regulatory authority -- should it be "in the public interest" or assume a narrower scope;
- (3) the quota system of licensing -- should it be retained;
- (4) the role of municipalities in licensing;
- (5) local option options -- is wet/dry the only way to go;
- (6) authorizing compensation to localities which lose revenues by voting "dry;"
- (7) alcoholic beverage control in rural Alaska -- what to do;
- (8) reducing hours of sales;
- (9) raising minimum drinking ages;
- (10) restricting advertising; and
- (11) the overriding issue of what relationship, if any, exists between restricting access to alcoholic beverages and alcohol related problems in society.

The Code Revision Commission has ended its work on title 4 until it receives further direction from the legislature. It seems likely that none will be forthcoming and that their draft and accompanying reports will be forwarded to committees already considering legislation on the subject.

Senate Bill 239, introduced by the Rules Committee, was designed to provide the first comprehensive revision of the ABC laws since the late 1950's. The legislation, drafted in large measure under the guiding hand of Senator Bill Ray of Juneau, proposed a number of significant changes to existing statutory provisions. But, in the final analysis, it cannot be considered

to be a radical departure from the general direction to the control of beverage alcohol currently reflected in title 4. And, it certainly failed to address many of the important considerations raised by the Code Revision Commission.

Perhaps the potentially most far reaching of the changes to title 4 proposed by SB 239 are provisions in article 4 which authorize the Board to grant an application for a license despite community opposition or even in the face of a community decision to go "dry" if the granting of such an application would encourage the tourist trade. In short, what little control communities now have to regulate the legal sale of alcohol within their political boundaries would evaporate in the face of the state's desire to improve its economic base by encouraging or accommodating the drinking habits of tourists.

At the same time, the provisions of proposed section 04.11.420 would appear to allow a community to assume absolute control over the sale and distribution of beverage alcohol through its zoning powers. The section in question requires the Board to deny an application for a new license or permit in any portion of a community where zoning ordinances or regulations prohibit the sale or consumption of alcoholic beverages. Thus, it would seem, a community could zone itself dry and over a period of time, as licenses or permits changed hands, bar the legal sale or consumption of alcohol inside its municipal limits. In the context of rural Alaskan settings, the time involved might well be measured in the span of a year or less.

A second significant proposed change is found in section 04.11.150 which authorizes the sale of alcohol pursuant to a verbal or written solicitation for purchase received within the licensed premises. The provision thus eliminates the current state of confusion whether it is legal to order liquor over the phone from a dry community, transmitting payment, for instance, via Alascom communication facilities.

A fair characterization of the apparent intent of SB 239 is that it perpetuates the role of the Board as one entailing economic regulation of the liquor industry, eliminating some obstacles to local control over the industry but at the same time creating a new potential for such control, while generally ignoring the question of what role the Board should play in dealing with the larger social problems associated with alcoholic beverage sale and consumption. The singular exception to this last statement apparently exists in proposed section 04.16.200 which authorizes felony penalties for illegal sales -- an option not available under present law. However, it is unclear whether the felony penalties only apply to sales to minors by persons previously convicted of unlicensed sales or to either unlicensed sales to minors and to unlicensed sales by persons previously convicted of unlicensed sales.

No action on SB 239 was taken by the legislature prior to adjournment. Similarly, the legislature did not approve legislation extending the life of the Board past June 30, 1980. Undoubtedly this only reflects a legislative decision that there would be sufficient time in the Second Session of the Legislature to

more fully consider the fate and possible future direction of the Board.

Members of the House Commerce Committee, which was charged with conducting the "Sunset" review of the Board, reviewed the Division of Legislative Audit's report and in a letter to House Speaker Terry Gardiner (D-Ketchikan) dated March 14, 1979⁶² noted that while they concurred in the findings of the audit they did not draw identical conclusions in all cases. Because the views of the House Committee are the most explicit extant statement of a legislative perspective of the Board's role and activities, they are set forth in full below:

The Alcoholic Beverage Control Board is intended to provide protections to the public regarding the conduct of the industries involved in the distribution and sale of alcoholic beverages within the state of Alaska, and to assure viable economic climate for those parties who participate within that industry. The objective or goal is, theoretically, to assure that this unique industry which can so easily affect the social and health conditions of any community, does not act contrary to the public interest in carrying on its business. However, the statutes establishing the Alcoholic Beverage Control Board are a historical hodgepodge of many different legislative intentions, and there is no unanimity within the State as to what this "public interest" is as it relates to this industry. There are not any other State programs which have similar, conflicting, or duplicating objectives, in short of arguable deregulation. The purposes of the program may be achieved by alternate methods, including the elimination of the Board and the streamlining of the procedure.

Also unique to the industry is the manner in which it relates to the wishes of local government entities. Serious question has arisen in the past as to the role of local governments in licensing. Current law requires local governments to make certain

62/ House Journal Supplement No. 29, March 15, 1979, pp. 53-56.

recommendations to the Alcoholic Beverage Control Board, but also allows the Board to totally ignore those recommendations. In recent years this has not been the practice, but it is still possible under current law.

During our hearings, questions were raised about the advisability of the quota system of licensing and about the enforcement practices (to the extent there are any) under the alcoholic beverage control laws. Also, the members of the Committee are quite familiar with the history of the Board and the industry in Alaska. The Board and its director and staff seem to spend much of their time on economic matters, particularly acting as a collection agency for local government taxing units and for the wholesalers, because of the questions involved in the transfer of a liquor license from a businessman who may have certain unpaid obligations. This is hardly in the public interest, and is not justified even under current law (however impenetrable current title 4 may seem).

It seems that the Board spends much of its time going through merely ministerial actions with regard to applications for licenses or transfers that are not opposed. Those not opposed are nearly always granted. When a licensing matter is contested, frequently it is initially heard by a hearing officer.

In light of these considerations, and in light of the social and political sensitivity of the issues involved in the regulation of the industry, the Committee has concluded that, while the licensing scheme should continue, the Board should be eliminated. However, to assure that the practices of the licensing scheme are periodically brought to the attention of the legislature in harmony with the "Sunset" law, the statutory provisions providing for the quota system (which is the heart of the licensing scheme) should be subject to "Sunset" review even after elimination of the Board.

The Committee on Commerce of the Alaska State House of Representatives will soon be introducing a bill to provide for elimination of the Alcoholic Beverage Control Board; addition of a four-year "Sunset" repealer on certain provisions in title 4 that establish the quota system and relate to the quota system; requiring that in most cases local government findings and recommendations with regard to licensing issues cannot be overturned by the

state except in very unusual cases (that is, providing a limited scope of review as to both issues of fact and law); barring the state from participation in collection of debts under the alcoholic beverage licensing scheme, except for obligations owed directly to the state, but providing for notification to creditors, public and private; and incorporating at least some of the revisions of title 4 of the Alaska Statutes which have been proposed by legislative interim committees and by the Alaska Code Revision Commission.

It is hoped that the recommendations of this Committee will adequately address some of the criticisms of the alcoholic beverage licensing scheme by the Division of Legislative Audit and by witnesses before this Committee as well as matters that have arisen in legislative and Code Revision Commission meetings over the last recent years.

The recommendations were included in H.B. 219 which was introduced in the House by the Rules Committee and referred to the House Health, Education and Social Service Committee where it was still awaiting action as the legislature adjourned.

The Senate's Committee on Health, Education and Social Services (HESS), chaired by Senator Glenn Hackney (R-Fairbanks) reviewed the auditor's report and in a letter to the Senate President dated March 14, 1979, merely recommended that the Board be continued until June 30, 1983.

B. The Kelso Study

In November of 1977 a five volume report detailing the findings of a two year analysis of alcohol problems was released. Authored by Dennis Kelso, the project's director, the report reviewed virtually every aspect of the alcohol problem in Alaska. Volume II⁶³ focused on legislative efforts at alcohol control.

⁶³/ "An Analysis of State Legislation Pertaining to Regulation and Control of Beverage Alcohol and Alcoholism and Alcohol Abuse, Alaska 1975." January, 1977.

Kelso assumed, for purposes of his study, that the policies of the Uniform Alcoholism and Intoxication Act of 1972 (AS 47.37.010, et. seq., Ch. SLA, 1972) were the policies of the state.⁶⁴ Kelso correctly pointed out that title 4 contains no overt indication of legislative intent and that the Alaska Supreme Court in Boehl v. Saber Jet Room, Inc., 349 P.2d 585 (Alaska 1960) had to "discover" the state's policy. In the Court's words:

[T]he "purpose" [of the 1959 Act creating the Board] is to regulate and control alcoholic beverages.⁶⁵

The Court further noted that:

It is a matter of common knowledge that lack of restraint in this field [the alcohol industry] is almost invariably damaging to the community. It is because of this that there may either be complete prohibition, if the legislature chooses to follow that course, or if not, that there may be conditions imposed which will have the tendency to afford the greatest degree of protection to the citizens of the state. . . .

[T]he law [the 1959 Act] recognizes private interests. But it also makes it abundantly clear, from the degree of regulation imposed by the legislature itself, that the primary concern was for the protection of public interests. . . .⁶⁶

Kelso summarized his findings with respect to the state's legislative efforts at control as follows:

In brief, the inconsistencies in current laws fall into three categories. First, the conflict between a punitive and a health-oriented alcohol policy still exists in insurance provisions, the Uniform Act's provisions for early release, and the lack of communication between the courts and treatment agencies.

⁶⁴/ Id., at p. 69.

⁶⁵/ 349 P.2d at 587.

⁶⁶/ 349 P.2d at 589. (Emphasis added)

Second, the state has delegated some of its responsibility to municipalities, while at the same time making it more difficult for them to meet that responsibility; e.g., the license fee rebate system which discourages the local option, the prohibition on special local liquor taxes, and the failure to allow commitment to local treatment centers. Finally, and perhaps most importantly, controls on the sale of alcohol through the ABC Board and the excise tax are totally divorced from the prevention and the treatment of alcohol abuse.

The legislature must make some adjustments in these three areas if it is to fulfill its responsibility for developing a cohesive alcohol policy. One can, of course, live with inconsistencies; but the inconsistency in this case makes it difficult for different state agencies which deal with alcohol related problems to coordinate their efforts.⁶⁷

This is certainly an accurate description of the current state of affairs two years later. And, nothing in the proposed revision of title 4 alters this situation.

C. The Views of Board Members and Staff

If the legislature's intentions in establishing the Board are as vague and inconsistent as Kelso states, it becomes a matter of more than idle curiosity to learn what members of the Board and of its staff think are the Board's purposes and the state's policies in the area of alcoholic beverage control.

Without exception, those interviewed stated that there was no clear-cut state policy on alcohol control set forth in the statutes. As one individual put it:

There wasn't one. We had very clear indication that there wasn't one.

Another expressed the following view:

⁶⁷/ Volume V: Executive Summary: "Descriptive Analysis of the Impact of Alcoholism and Alcohol Abuse in Alaska, 1975." November, 1977, p. 37.

Well, I think it's probably . . . I've sort of answered it already. No, not an overriding state policy, in other words. There are a number of sub-policies without a big. . . . The thing you're looking for, is there a policy that says we want to, through the enforcement process and title 4, we want to cut out alcohol abuse? No. The answer is no. Or cut out alcoholism? The answer is no, clearly no. . . . Now I'm talking about title 4. I don't know about, I mean, I suppose that you might argue that there is some policy articulated somewhere as to prevention of alcohol abuse through education, for instance, or through recreation. . . . So I'm not saying that there is not an overall state policy somewhere but it certainly is not articulated in that kind in title 4.

If explicit policy could not be found in legislative acts, then perhaps it could be developed implicitly from them. Consequently, we asked our respondents⁶⁸ what they thought the policies of the Board were and ought to be. Predictably, the responses varied from respondent to respondent.

Typical are the following:

My opinion, there, is the total regulation of the industry and alcohol in the state to the degree that I don't think we're a public regulatory agency. We're an industry and some people don't like the term industry because it isn't manufacturing, but that's what it refers to: is the liquor industry. To me, that's the crux of where we are as far as I'm concerned. Our enforcement efforts delve into the regulation of those licensees who are distributing the product throughout the state through a license or even not through a license, illegally, and that's been my total enforcement thrust. That enforcement also goes hand in hand, I think, with the licensing function which is an enforcement element in itself in terms of what documentation is presented by applicants in terms of new licenses, transferred licenses, or renewal applications. That has an enforcement element, too. That's what I envision it. You see?

* * * * *

⁶⁸/ All of whom were assured anonymity because of the position in which the Board found itself during this research.

Well, uh, you know, given the nature of alcohol, what it does, what it can do, I think that it [the Board] can and should and ought to legitimately control the use thereof and, of course, I can't avoid the contexts that, setting aside what is, but still remembering that context in which we are dealing. I'll use some examples: the control they use, for instance, is by age. We recognize that some people are, by virtue of their age, less able to "handle" alcohol and perhaps exercise self-discipline in respect thereto than are those who are somewhat older. That assertion is probably generally true but in specifics it is certainly subject to some question. O.K., I think we also, because of the nature of the substance, can say that perhaps we ought to regulate the times during which it is consumed or even sold simply on the basis that we frankly need some protection against ourselves, from ourselves I should say. That may be little bit of a paternalism showing through which is really kind of reflected to me in other ways, but, anyway, and in the same vein, we can recognize again because of the nature of the substance that it creates in people or, shall we say, it causes people to lose some sense of judgment as to what they should or should not do. Hence, we should indicate by the law or regulation in some manner that beyond a certain point maybe we ought not to allow these people to continue to drink. Again, I think that from an "ought to" point of view, we ought to regulate the kind of behavior you can engage in when you are under influence of the substance in the sense that, again, because of the loss of judgment that I think is medically provable. As you know, we have a limit on the number of establishments that can exist within a certain population area. Frankly, I'm not certain that that serves any particular purpose in the sense that we, I suppose the goal is that it would limit the consumption and given what I've always said about consumption, I'm not certain that we want to place an upper limit on consumption through legal means and I say this because of various strong feelings of my own in connection with, oh, just freedom of the individual. For instance, I don't think that we ought to say that while you can buy no more than two fifths of wine in one night or one purchase or that we ought to say that a person can only have two bottles of beer in the bar -- aside from this, the incredible enforcement problem. If the goal of the population quota is simply to limit consumption, I'm not sure that that is a valid goal. In other words, I think that our goals should legally, from a legal point of view, and legal control and so forth should not necessarily be to limit consumption per se but limit the kinds of behavior you can engage

in while under some sort of influence. Probably restrict the hours during which it is consumed and limit and restrict the ages, limit the consumption to certain ages assuming that they are better able to handle it. I haven't given any thought to what else ought to be. I'm just hesitant to recommend that we pass a lot of laws saying that this, this, and this, are restrictions on the consumption of alcohol. I just don't know that that's the way to go about fighting alcohol abuse. . . . And, I think there are some legitimate concerns about who's in the business. I think there are some legitimate concerns about the way a business is operated. I can say this because of the nature of the substance, people's judgments affected and so forth. People tend to do things when they are inebriated that they don't do when they are sober. That goes without saying. Hence, there should be means to make certain that while it's served in a bar it should be properly reported and dealt with in an appropriate manner.

I think that the biggest concern or the biggest underlying attitude for anybody who is on the Board has got to be the concern probably that nobody has really answered: Is licensing and regulation going to really prevent or control alcoholism? And I don't think that question has ever really been addressed, I don't know if it can be addressed. And I think, at least it's my feeling, that prohibition is not necessarily a way to control alcoholism. I think that's where the Board could have an important impact. By limiting availability, or limiting availability to certain groups, or certain areas, and the Board as a whole has never addressed that, never taken a broad look at that. They've gone regulation by regulation, actually they've gone application by application, and tried to address that in a small way and that's one of the problems, I think, that there is no general attitude or theory that should the Board limit alcoholism through licensing, we haven't really addressed that. . . .

[W]e try to but a lot of time we don't even stay within the framework of title 4 because it's an outdated law and there are certain things that, you know, it's just not reasonable to enforce anymore. Maybe it's a very broad outline, sure we try to stay within title 4, and we use that a lot as far as when someone goes down to the ABC Board and asks about a license or something and they'll say: Well, here's what you have to do and you have to stay, you know, you have to be so many feet away from the church, and so many feet away from

the school and you have to be within the population quota and you do this, that , and the other thing and then you can get a license. And so, we use that, and then only when we have certain extenuating circumstances do we go outside title 4 to either approve or disapprove a license. And it's always the overriding factor, is it in the best public interest? But when you say, "Is it in the best public interest?" nobody, like I said before, nobody has answered that question. Is limiting licensing, or limiting liquor availability in the best public interest to control alcoholism? I personally don't think it is, but you know we have that confrontation or argument several different times every meeting because some of us think it is and some of us think it isn't. And that's not really our job, though, I think that's a problem, possibly with the ABC Board, is that we're supposed to be controlling the liquor industry through rule making or regulation making and enforcement and, not necessarily enforcement on the Board but through listening to problems. But, we've never, ever, in the year that I've been on the Board, said, "Look, there's an alcoholism problem in this city or this state. What are we as Board members going to do about it?" And, I think that's something that the Board could address themselves to much more easily than any other body because they are involved directly, they can do things. The question is, I think, what can we do, and nobody knows.

Those connected with the Board who were questioned during the course of this study were unanimous on three things: (1) that title 4 was totally outdated and had to be completely rewritten, (2) that the Board's own regulations were similarly outmoded and had to be revised, and (3) that enforcement efforts had to be improved.

With respect to changes in title 4 and the regulations, the following comments fairly characterize the tenor of the responses:

Title 4? First, I think that there just has to be a specific definition of the authority that enforcement people have on the staff. A lot of it tends to be in the attitude of the individuals who are employed. We tend to have a lot of applicants who are police officials, troopers or former police officers/troopers, and they have a strong criminally oriented enforcement background where it appears that part of the job

should be carrying a gun. I mean, there are instances probably where there are premises that the guys go into either in surveillance or investigative areas where there might be some need for some protection, but we always try to coordinate that with the local authorities so there's some support there. But that's an area of concern with staff, you know, they don't feel they can do their job unless they can wield power, so to speak, to make the public aware that "Hey, you're going to have to abide by what we dictate," so to speak. That's a poor word, that's a very poor word, but that's the feel, they feel that way. But that's a mental attitude and I think it's just background and training that has evolved that person into that law enforcement and mental stance, but we're not a criminally oriented organization. There are off-shoot kinds of criminal activities, you know, liquor establishments like this bootleg thing in Bethel. Could be a lot of other things involved peripherally with that. That remains to be seen.

Another respondent stated:

Well, I guess that I'm maybe a man of low expectations, but the first thing [title 4] I'd want to see is simply the thing straightened out. It's almost impossible to interpret. It's been a hodgepodge, it's been put together amendment by amendment. It's probably the worst title in the whole. In my practice I've had occasion to deal with most of them, it's probably the worst written of all. There are some things that, one of my pet peeves is the hotel/motel license, which is an exception to the population quota, which is just awfully difficult to interpret. You know, what's encouraging the tourist trade? What findings you have to have for that? Does indeed that license count in the population quota? It seemed to me that it is strictly, and the statute would say that it certainly does count in the population quota. Well, what does that mean? It means that the small neighborhood bar is someday going to be excepted out of existence because the hotel/motel licenses will take over. That bothers me. There's some other provisions as to transfer and transfer relocation that are terribly messy. We just got through with a case, that was, from my point of view, very unsatisfactory, I mean in the sense that we had to do what we had to do, we did what we had to do but it was just, the poor citizen who was involved never understood to this day what happened to him and why he couldn't do something. It was just so messy and unclear.

The other thing that I'm not so certain that I like is the fact that we end up being sort of, in a sense, a debt collector. Before you can transfer a license, you have to present an affidavit saying that all debts have been paid or that, not so much that, but you have to present an affidavit of debts and then, of creditors, and then of course the creditors have the opportunity to hold up the license pending payment of the debt. And, I don't know if that's a legitimate function of state government in the sense that what happens is that the wholesaler can keep feeding liquor to a bar with the knowledge that he's got a lien in a sense on the license and I don't know whether that, you know, whether that's really legitimate. Also, it creates problems with what's a debt. I guess the main thing is that I don't know whether I want any more power because I think government is dangerous to give any agency a lot of discretion. I think it's inappropriate to do so. I guess the main thing I'd like to do is to have the darn thing cleaned up so you could read it, make some sense out of it. It's not organized well. Incidentally, it doesn't, for instance, place any restrictions on the moral character of the licensee but does place a restriction on the so-called moral character of employees which I find kind of anomalous. We as a matter of course indicate if the guy has an extensive felony record, recent felonies, we might not let him into business. Certainly if it was recent we wouldn't, but if they were real old we would, but I think that's exercising some discretion and I've, nobody has ever challenged it, but I'd query whether we have that authority.

Still another respondent viewed title 4 in the following vein:

I think most of the enforcement areas. Some idea of what is and what is not against the law and the different licenses or license categories right on down to wholesale, retail, dispensary, everything, because nobody really knows. I think that's a real problem. Also, what to do if there is a problem there. Do you, what can you do? I think there is a lot of, as I was saying, title 4 is a good title because I think it addresses just about everything that needs to be addressed. But it's not clear enough: What is and what is not against the law. So you can go through there and say O.K., this is a good point, it should be in here but what should we do about it? I don't think title 4 should get into any of this pricing stuff, what is, you know, that kind of stuff.

I think title 4 should probably give the Board more power, or more, it needs more input from the alcoholism people, people that think you can control alcoholism through licensing or availability, and it needs more input from everybody. I think it should be the headquarters for a lot of different, all the feeling or attitudes on alcohol and though the ABC Board does have the power to make new regulations and to get new laws established and it also has the power to enforce the existing ones through some means better than what we have now. That should be done and I don't think it is being done.

The comments set forth above also provide some sense of the problems associated with enforcement of the provisions of title 4. However, one of our respondents identified a problem unrelated to title 4 which is difficult to comprehend. The respondent stated:

It [communication] should happen with the enforcement people, _____ and I had never talked prior to my coming on the Board. In fact, I had never talked to them until about six months ago and I had been on the Board almost a year. And never talked to them until then and he had some questions, he didn't know how bush business worked or how any of this or that thing worked? Why they didn't come to us and ask us, I'll never understand. How can you regulate anything unless you know what's going on? They would call up and ask us how do you get a better price on something? And these people are supposed to be regulating us and they don't know how, anything about wholesalers. That's what I mentioned earlier is that sometimes they don't even know the names of the wholesalers and they are supposed to be regulating the industry? I think that's embarrassing. So, I think the fault is just as much on that side, they aren't really getting out enough and talking to anybody about the problems. Maybe that's what it is, maybe they're short of people there and they are just busy doing regular licensing work and taking care of some of the problems. But, I think that's the answer for a lot of things. It certainly would seem to be!

IV. CONCLUSIONS

On the basis of our legal analysis of title 4 and of the Board's regulations, analysis of the views of others who have studied the Board, and as a result of our conversations with those associated with the Board, we have reached the following conclusions with respect to the Board's role in the control of alcohol in Alaska.

Initially, the Board's role is not clearly understood by most people, including, apparently, those who should know.

One of our respondent's replied when asked about his:

No. Absolutely not. Some pretty sophisticated people don't understand, especially the limits. . . . It seems to me that there is a real lack of understanding as to what our responsibilities are, what our limits are. I think it is a fairly common misconception that somehow we have all these broad powers and I just don't see it that way. We're limited by title 4.

It would appear that those who have assumed that the Board would solve social problems associated with alcohol consumption have been mistaken. Nothing in the legal history of alcoholic beverage control efforts in Alaska provides any basis for such expectations. To the contrary, the legal history, current and proposed statutes and regulations, and the attitudes of Board members and staff clearly demonstrate a relatively simple role: regulation and control of the alcoholic beverage industry in Alaska.

Secondly, both existing Alaska statutes and their accompanying regulations originally designed, one assumes, to

facilitate this relatively simple role are hopelessly outdated and work substantially at cross purposes with even this role.

Third, and by almost universal agreement, the current enforcement activities of the Board are inadequate. Such a result is not surprising when one considers that there are approximately 1300 licensed premises of one sort or another scattered across the vast Alaskan landscape and but five (5) investigators. While no one has recently attempted the feat, it would probably be a physical impossibility for the staff to thoroughly inspect every single licensed premise in the state in the course of a normal working year.

On the other hand, as Table One reveals, the enforcement activities of the Board have taken a decided swing up in recent years indicating at the very least an increased awareness of the need for more vigorous enforcement activities.

TABLE ONE

ABC BOARD ACTIONS

(Excluding License Issuance & Denial)
1971 - 1978

Type of Action	Year							
	1978	1977	1976	1975	1974	1973	1972	1971
Suspension	3	11	1	4	2	5	4	5
Strong letter	5	7	4	4	7	2	6	2
Revocation	--	--	4	--	--	2	--	1
Non-Renewal	9	1	1	--	--	6	--	6
	17	19	10	8	9	15	10	14

SOURCE: ABC Board Minutes 1971 - 1978

In addition, over the same period of time the Board denied approximately 330 applications for licenses, although the annual number of denials presents a much smoother line over time than other enforcement activities.

Finally, the current staff of the Board in interviews with it indicated a significant increase in criminal enforcement activities in recent years. However, the exact proportions of the increase are difficult to measure because, as the auditor's report noted,⁶⁹ it was difficult to find documents on these cases. The apparent reason is that the entire file was shipped to the appropriate district attorney's office where it became submerged in his paperwork, never again to surface. This practice has since been stopped and D.A.'s are now provided with copies of the Board's file material.

All other conclusions with respect to the Board's role and activity pale in comparison to these three. In fact, most are simply constituent elements of these three major conclusions and have been mentioned directly or alluded to previously in this report.

V. RECOMMENDATIONS

In arriving at decisions on the nature of the recommendations which we should offer with respect to the role and functions on an Alcoholic Beverage Control Board we had to confront a problem we assume must have confounded those who have also looked at

69/ Op. cit., n. 57 at p. 12

the Board of late: how and what does one prescribe as a remedy in the absence of a consensus as to what is wrong with the patient. In reality there is no surefire answer to this dilemma. Consequently, we have reached our decisions on the basis of certain assumptions which may or may not be acceptable.

First, we assumed that some control of the sale and distribution of alcohol is viewed as essential by all concerned.

Second, we assumed that some enforcement activity with respect to sales and distribution violations is essential.

Third, an assumption was made that some level of enforcement of alcohol consumption abuse would be expected by the citizens of the state.

Fourth, we concluded that local units of government could be expected to maintain a relatively high level of interest in activities related to the sale, distribution and consumption of alcohol.

Fifth, we assumed that the capacity of both state and local agencies of government to deal with all these problems would always be greater in the urban areas of the state (Anchorage, Fairbanks and Juneau) than in its rural areas (everything else, but especially western Alaska and the North Slope).

Sixth, we assumed that the identifiable social problems associated with alcohol would not dissipate in the foreseeable future and would continue to be most pronounced in relative terms in their impact on rural Alaska and Alaska Natives.

Seventh, and lastly, we assumed that if the state or its

citizens wish to begin to solve some of the clearly demonstrated social costs⁷⁰ associated with alcohol abuse, then a cohesive and comprehensive state policy encompassing taxation, regulation, enforcement, education, prevention, and treatment issues is an absolute necessity and ultimately must be realized.

Given these assumptions we make the following recommendations with respect to the future of the Alcoholic Beverage Control Board.

1. The Board should be continued for a period of time consistent with the objectives of rigorous Sunset review.

2. The Board's membership should be constituted substantially as provided for in the Code Commission's April 18, 1979, draft. Our observations of the current Board have led us to conclude that the "industry" representatives on the Board are not blind to the needs of the public interest. Further, they bring to the Board much needed business operations expertise on a very complicated industry.

3. The jurisdiction of the Board's investigative staff should be narrowed considerably. Enforcement of hours, minors, intoxicated persons and similar violations should be removed from the responsibilities of the Board's staff. We have concluded that the Board is not likely to be given sufficient investigative staff to perform such functions, nor should they.

⁷⁰/ See generally, Kelso, Dennis: "The Economic Impact of Alcoholism and Alcohol Abuse in Alaska 1975" and Kelso, Dennis, Social Systems Indicators of Alcoholism and Alcohol Abuse in Alaska, 1975. Juneau, 1977.

There is simply no cost justification for such action. Moreover, so long as the perception that such enforcement activities are within the jurisdiction of the Board is permitted to exist the incentive for local or state law enforcement agencies to perform such functions is either eliminated or significantly reduced. If all concerned parties clearly understand that either the State Troopers or local police are the only recourse to total nonenforcement then it is probable that those agencies will begin to actively enforce existing or proposed laws. Collectively, their enforcement efforts should produce significantly greater results than those generated by a mere five (5) incredibly overworked individuals. At worst case limits -- that is, no one does anything -- the situation can not deteriorate much from where it now stands.

4. The Board's Director should be given, as most of the others who have evaluated the Board have recommended, the authority to approve or deny all license applications, subject to appropriate due process appeal to the Board.

5. The Board's licensing staff should remain with the Board but be transferred in toto to the Department of Commerce. Their functions should be consistent with a policy designed to insure that the industry remains relatively "clean," that those who are licensed are "fit" -- financially sound, not actively associated with criminal elements, etc., -- to deal with a volatile commodity and that applications are efficiently processed in a fair manner.

We have made this recommendation because we believe that the Board staff's primary function ought to be a licensing function. Licensing decisions should be made on an objective basis and ought to be divorced from any attendant revenue considerations. The theoretical possibility exists, so long as the Board is an arm of the Department of Revenue, that revenue needs might outweigh other concerns in licensing decisions. We stress that this is a theoretical possibility. We have found no evidence, nor has any other investigator of whom we are aware, that such a situation has ever existed. Further, since a primary function of the Department of Commerce is licensing, one would expect to find certain economics of administration arising out of the move.

6. The Board's investigative staff should be retained and also transferred to the Department of Commerce. However, they should be given significantly new duties.

First, they should focus their investigative activities primarily on the issue of whether the issuance of a license is in the "best public interest." We would define "best public interest" as the balancing of the individual right of competent adults to consume alcoholic beverages with the need of society to suffer a minimum of dislocation resulting from abuses of that individual right.

We would view the prevention of potential dislocation as occurring on a number of levels including: (a) insuring that the sale and distribution of alcohol takes place in an

environment that effectively protects the economic interests of the consumer; (b) that the balance of economic power between retailers and wholesalers remains in relative equilibrium; and (c) that the potential social costs of excessive consumption are adequately accounted for in the licensing decision making process.

In this regard, we strongly urge adoption of a procedure somewhat akin to the environmental impact statement process in connection with all future new license or license transfer applications. More specifically, we believe that the Board should adopt a checklist of sorts of probable "impacts" ensuing from the issuance of a license, such as increases in vehicular accidents, shootings, injury, family disturbances, etc., and determining the carrying capacity, if any, of public and private agencies to deal with such occurrences. Questions such as what emergency medical resources exist, whether these are adequate "sleep-off" shelters, what is the jail capacity, how far away is the nearest law enforcement officer, among others, should be addressed and answered in connection with new applications or transfers. And, licenses should be reevaluated after a period of time in the case of renewals. The applicant should be obligated to provide a significant amount of this information, all of which should be of such a nature that it will be readily verifiable by a state agency.

The social ecostructure which such a statement should cover should be consistent with the location of the proposed license

premise. In rural Alaska this would entail review of probable impact on villages within reasonable or easily accessible air or water travel. It is critical that all concerned parties understand that artificial notions of distance such as two or five mile radii have no real meaning, are largely useless and potentially counterproductive concepts in rural Alaska contexts.

7. The Department of Health and Social Services and its appropriate divisions should undertake the inspection of licensed beverage dispensary premises, pubs, clubs, etc., to insure that elementary health and safety laws and regulations are observed.

8. Credit sales other than face to face transactions should be banned.

9. Transportation other than by an owner into a community which has opted to be completely dry should be banned. All alcohol transported by common carrier which is not clearly labeled as such should be declared contraband and subject to seizure and forfeiture. Propelled vehicles as that term is defined in AS 11.81.900(b)(43) used in connection with the illegal transportation of alcohol should be subject to due process forfeiture proceedings.

10. Local units of government and unincorporated villages should be given explicit authority to pass local ordinances, in accordance with provisions of title 29, limiting or banning possession of alcoholic beverages in cases in which they have opted to be totally "dry."

11. Revenue refunds from taxes collected on alcoholic beverages should be provided to communities which vote themselves

dry. Similarly, but proportionately, compensating revenues should be provided to communities which by local ordinance significantly restrict the legal hours of sale or consumption. And, communities which demonstrate concerted enforcement activities should be concomitantly recompensed. The investigative staff of the Board should monitor these enforcement activities and the director should make explicit recommendations to the Commissioner of Revenue on the amount of refunds a particular community should receive under AS 04.10.460.

12. Conversely, when a community votes to go "wet" serious consideration should be given to the impact such a decision will have on surrounding "dry" communities and mechanisms should be established to insure that those dry communities are adequately recompensed, perhaps out of revenues otherwise due to the community voting to go "wet."

13. The entire structure of licensing exceptions designed to promote tourism should be carefully evaluated. Provisions similar to those proposed by the Code Revision Commission in its April 18, 1979, draft should be enacted and licenses should be enacted and licenses should be issued for a limited two year basis subject to renewal only upon a clearly demonstrated showing of positive tourism impacts on the effected community. In no case should such an exception be made in a community which has opted to be totally "dry."

14. The Code Revision Commission's proposal with respect to differentiating between a license and a certificate to operate

should be enacted by the legislature. Investigation of fitness to operate should be performed by the Board's investigative staff.

15. Statutory criteria for determining whether to issue a license or a certificate of fitness such as those suggested by the Code Revision Commission should be adopted. The criteria should include items compatible with the impact statement suggested previously in recommendation six above. While many of the items proposed by the Code Revision Commission as criteria are meritorious, considerations of due process suggest that they be more specifically set forth so that applicants as well as the public, the Board and its staff will know what kinds of information will be required to support licensing or certificate to operate decision making and to insure that those called upon to review such decisions will have a basis for objective review.

16. Criminal statutes carrying felony penalties for bootlegging should be enacted and these and other crimes such as those set out in proposed chapter 16 of the Code Commission's draft or those contained in chapter 16 of SB 239 should be removed from title 4 and incorporated within the revised title 11 in an appropriate chapter, perhaps 66.

It should be understood that this list of recommendations is by no means all inclusive. In fact, many solid recommendations can be found in SB 239, HB 219, the Code Revision's draft, the Auditor's Report and the various public comments made in connection with the Code Commission's work.

What is most important, however, is that a complete revision of title 4 and a companion revision of the Board's regulations should only be undertaken in connection with a complete restructuring of all the state's laws dealing with alcohol. And, that restructuring should be designed to deal comprehensively with the serious impacts which alcohol has on rural Alaska and on Alaska Natives.

Finally, we would like to stress that while a comprehensive review of all alcohol laws is essential, revision of title 4 and a reordering of the activities of the ABC Board can proceed independently of those larger efforts. All that is required, as we noted in our seventh assumption,⁷¹ is the establishment of a state policy which will provide the basis for legislative purpose. On the other hand, we recognize that while "all" is a small word in these contexts it would have to span a very large gulf between significantly diverse areas of public opinion. We do not ignore the likelihood of failure. We would only remind the reader of the continued consequences flowing from a failure to try: serious bodily injury, death, broken families, ruined lives, lost wages, increased state costs, higher crime rates, to but start again the litany of problems flowing from abuse of alcoholic beverages.

71/ Supra p. 44.